## NORTH CAROLINA WAKE COUNTY SEP 2010 SEP 2010 OF THE NORTH CAROLINA STATE BAR 10 DHC 35 The North Carolina State Bar, Plaintiff, V. Porter W. Staples, Attorney, Defendant. Defendant.

Plaintiff, complaining of defendant, alleges and says:

- 1. Plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the rules and regulations of the North Carolina State Bar promulgated thereunder.
- 2. Defendant, Porter W. Staples, (hereinafter "defendant" or "Staples"), was admitted to the North Carolina State Bar on December 20, 1985, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the State of North Carolina State Bar and the laws of the State of North Carolina.

Upon information and belief, plaintiff alleges:

3. During all or most of the relevant periods referred to herein, Staples was actively engaged in the private practice of law in Asheville, Buncombe County, North Carolina.

- 4. Between 2002 and December 2006 Staples maintained a client trust account with the Bank of Asheville, account number ending in the digits 9324 (hereinafter the "trust account").
- 5. Staples used the trust account as a general trust account in which he deposited and from which he disbursed client funds.
- 6. On or about June 17, 2004 Staples received \$81,570.99 from Asheville Savings Bank (hereinafter "ASB") by wire transfer into his trust account at the Bank of Asheville.
- 7. The \$81,570.99 did not belong to Staples or any of his clients and should not have been wired to the trust account.
- 8. ASB mistakenly wired the \$81,570.99 to Staples, when the funds should actually have been wired to the trust account of Attorney Randolph C. Romeo.
  - 9. Romeo and ASB were not aware of the misdirected wire until 2008.
- 10. When Romeo realized he never received the funds from ASB, he contacted ASB and requested that the bank provide these funds to him.
- 11. ASB examined its records and determined that the \$81,570.99 had been mistakenly wired to Staples on June 17, 2004 rather than to Romeo.
  - 12. ASB could find no record of the funds being returned to it by Staples.
- 13. In August 2008 ASB notified Staples that it had mistakenly wired the \$81,570.99 to his trust account 4 years earlier.
- 14. Staples eventually told ASB, sometime in late 2008 or early 2009, that the funds were not in his trust account at that time.
- 15. From the time of receipt of the funds, the minimum account balance in Staples' trust account should have been \$81,570.99, the amount mistakenly wired into the account by

- ASB. Staples' trust account reflects that the daily balance dropped to \$79,144.06 on January 11, 2005 and \$31,932.69 on January 12, 2005.
  - 16. As of August 31, 2007 there was only \$4,959.57 in the trust account.
- 17. Staples has not accounted for what happened to the \$81,570.99 that he received from ASB and has not returned the funds to ASB.
- 18. Staples did not maintain a ledger card containing a record of receipts and disbursement and showing the balance of the funds held in the trust for his clients.
- 19. Staples failed to maintain bank receipts or deposit slips listing ASB as the source of the funds wired into his trust account.
- 20. Staples failed to reconcile his trust account quarterly at least between June 2004 and April 2005.

THEREFORE, plaintiff alleges that Staples' foregoing conduct constitutes grounds for discipline pursuant to N.C. Gen. Stat. §84-28 (b) in that Staples violated the Revised Rules of Professional Conduct in effect at the time of his action as follows:

- a. By disbursing \$81,570.99 belonging to ASB from his trust account, Staples failed to identify, hold and maintain entrusted property in violation of Rule 1.15-2(a) of the Rules of Professional Conduct.
- b. By disbursing the entrusted funds of ASB, Staples used entrusted funds to the benefit of others who were not the legal or beneficial owners of the property in violation of Rule 1.15-2(j) of the Rules of Professional Conduct.
- c. By failing to maintain bank receipts or deposit slips listing the source of all funds deposited in the trust account Staples failed to maintain records in violation of Rule 1.15-3(a)(1) of the Rules of Professional Conduct.

d. By failing to maintain a ledger containing a record of receipts and disbursements and showing the balance of the funds delivered by ASB in the trust account, Staples failed to

maintain a ledger in violation of Rule 1.15-3(a)(5) of the Rules of Professional Conduct.

e. By failing to reconcile his trust account quarterly, defendant failed to balance his

individual client balances and reconcile them with the current bank balance for the trust account

in violation of Rule 1.15-3(c) of the Rules of Professional Conduct.

WHEREFORE, plaintiff, the North Carolina State Bar, prays that:

1. Disciplinary action be taken against defendant in accordance with N.C. Gen. Stat.

§84-28 and 27 N.C.A.C. 1B §.0114 as the evidence may warrant;

2. Defendant be taxed with the administrative fees and with actual costs permitted

by law in connection with the proceeding; and

3. For such other and further relief as is appropriate.

This the 30<sup>th</sup> day of September, 2010.

Ronald G. Baker, Chair

Grievance Committee

William N. Farrell

Deputy Counsel

The North Carolina State Bar

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